

March 30, 2023

The Honorable Jesse M. Furman  
United States District Judge for the Southern District of New York  
Thurgood Marshall Courthouse  
40 Centre Street, Room 2202  
New York, NY 10007

Re: *Golden Unicorn Enterprises, Inc., et al. v. Audible, Inc.*, 1:21-cv-7059-JMF

Your Honor:

The parties write to request the Court's approval of a procedure for moving to seal materials from the following documents, all of which are due to be filed on April 5, 2023: Audible's Opposition to Plaintiffs' Motions to Exclude Opinions of John Rodzvilla and Juli Saitz; Plaintiffs' Opposition to Audible's Motions to Exclude Opinions of Thad McIlroy and Joseph Egan; and Plaintiffs' Opposition to Audible's Motion for Summary Judgment. In support of its response, Audible may file documents that Plaintiffs designated as "confidential" or "highly confidential" pursuant to the parties' Protective Order (ECF No. 44). Because Audible is still preparing its response, it does not have a final set of documents that it intends to file in support. Likewise, in support of their responses, Plaintiffs may file documents that Audible designated as "confidential" or "highly confidential" pursuant to the parties' Protective Order (ECF No. 44). Because Plaintiffs are still preparing their responses, they have not yet identified a final set of accompanying documents.

On March 29, 2023, Audible notified Plaintiffs that it may file confidential and/or highly confidential documents, Plaintiffs notified Audible that they may file confidential and/or highly confidential documents on March 30, 2023, and the parties agreed on the below procedure, which is similar to the procedures the Court approved for class certification briefing, Audible's motion for summary judgment, the parties' motions to exclude expert testimony, Audible's renewed motion for spoliation sanctions, and Audible's reply in support of its spoliation motion. *See* ECF Nos. 127, 136, 161, 174, 183, and 234.

- **April 5, 2023:** Audible will file its Opposition to Plaintiffs' Motions to Exclude Opinions of John Rodzvilla and Juli Saitz and all of its supporting materials under seal. If the confidential/highly confidential materials include those designated by Audible and that Audible wishes to file under seal, then Audible will file a motion to seal or redact those materials.
- **April 5, 2023:** Plaintiffs will file their Opposition to Audible's Motions to Exclude Opinions of Thad McIlroy and Joseph Egan and all of their supporting materials under seal. Plaintiffs will file their Opposition to Audible's Motion for Summary Judgment under seal. If the confidential/highly confidential materials include those designated by Plaintiffs and that Plaintiffs wish to file under seal, then Plaintiffs will file a motion to seal or redact those materials.

- **April 14, 2023:** Plaintiffs will file any letter motion to seal their documents that Audible filed as exhibits to its opposition to Plaintiffs' *Daubert* motions and send Audible any highlighted/redacted brief and/or exhibits.
- **April 14, 2023:** Audible will file any letter motion to seal its documents or information included in Plaintiffs' oppositions to Audible's *Daubert* motions and/or Audible's motion for summary judgment. Audible will send Plaintiffs any highlighted/redacted brief and/or exhibits.
- **April 17, 2023:** Audible will file public and redacted versions of the documents in support of its *Daubert* opposition that Plaintiffs and/or Audible do not move to keep under seal, along with sealed versions of the documents the parties seek to keep under seal in their entirety or with highlights for proposed redactions.
- **April 17, 2023:** Plaintiffs will file public and redacted versions of their *Daubert* opposition and/or their summary-judgment opposition and supporting materials that Plaintiffs and/or Audible do not move to keep under seal, along with sealed versions of the documents the parties seek to keep under seal in their entirety or with highlights for proposed redactions.

The parties respectfully request that the Court grant the parties' proposal to allow the parties sufficient time to review and justify their needs to seal or redact any documents.

Respectfully Submitted,

/s/ Christopher Bagley

Gary W. Jackson  
gjackson@farrin.com  
Christopher Bagley (admitted *pro hac vice*)  
cbagley@farrin.com  
Law Offices of James Scott Farrin  
555 S. Mangum Street, Suite 800  
Durham, NC 27701  
(919) 226-1913

Mitchell Breit

mbreit@milberg.com  
Leland Belew (admitted *pro hac vice*)  
lbelew@milberg.com  
Milberg Coleman Bryson Phillips Grossman,  
PLLC  
100 Garden City Plaza, Suite 500  
Garden City, NY 11530

/s/ Brian D. Buckley

Brian D. Buckley (admitted *pro hac vice*)  
bbuckley@fenwick.com  
Deena Feit (admitted *pro hac vice*)  
dfeit@fenwick.com  
Wenbo Zhang (New York Bar No. 5623186)  
wzhang@fenwick.com  
FENWICK & WEST LLP  
1191 Second Avenue, 10th floor  
Seattle, WA 98101  
Telephone: 206.389.4510

Kathryn J. Fritz

kfritz@fenwick.com  
Jedediah Wakefield (admitted *pro hac vice*)  
jwakefield@fenwick.com  
Nicholas A. Santos (admitted *pro hac vice*)  
nsantos@fenwick.com

(212) 594-5300

P. Renée Wicklund (admitted *pro hac vice*)  
rwicklund@richmanlawpolicy.com  
535 Mission Street  
Richman Law & Policy  
San Francisco, CA 94105  
(415) 259-5688

*Attorneys for Plaintiffs Golden Unicorn  
Enterprises, Inc. and Big Dog Books, LLC*

FENWICK & WEST LLP  
555 California Street, 12th Floor  
San Francisco, CA 94104  
Telephone: 415.875.2300

*Attorneys for Defendant Audible, Inc.*

Application GRANTED. The Clerk of Court is directed to terminate ECF No. 239.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Jen Brum".

March 31, 2023